

Notice of Allowability

Application No.

10/687,152

Examiner

Elizabeth Houston

Applicant(s)

HARRIS ET AL.

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment submitted 01/17/07.
2. ☒ The allowed claim(s) is/are 26-39.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Shawn Sentilles on 04/23/07.

The application has been amended as follows:

CANCEL CLAIMS 1 and 7-11

AMMEND CLAIM 26 AS FOLLOWS:

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26. (Currently amended) A surgical instrument, comprising:

a support portion, said support portion including a support member and an upper handle, said support member having a narrow elongated configuration, said upper handle ~~portion~~ extending from a trailing end of said support member in a ~~fixation~~ fixed relationship thereto,

an actuation member having a narrow elongated configuration, said actuation member slidably disposed along an upper surface of said ~~elongated support member~~,

a lower handle ~~portion~~ disposed below said support portion, an upper end of said lower handle having a pivot arm, said pivot arm pivotally connected to said support portion adjacent a trailing end of said support member and further pivotally connected to a trailing end of said actuation member,

an upper jaw having a leading end and a trailing end, said trailing end of said upper jaw pivotally connected to a leading end of said actuation member, a hinge member extending below said trailing end of said upper jaw, and said upper jaw further pivotally connected to a leading end of said support member via said hinge member of said upper jaw,

a lower jaw, said lower jaw extending from a leading end of said support member and disposed below said upper jaw for use in gripping tissue between said upper and said lower jaws,

said upper jaw having an upper surface and a lower surface, said upper jaw having a hole passing therethrough between said upper surface and said lower surface, said leading end of said upper jaw having a slit formed therethrough a distal end of said upper jaw and extending from the upper surface to the lower surface of said upper jaw and in communication with said hole of said upper jaw, said slit having a narrow dimension being narrower than said hole of said upper jaw and configured to allow a suture thread to pass therethrough,

said lower jaw having an upper surface and a lower surface, said lower jaw having a closed perimeter hole extending therethrough between said upper and said lower surface, said

closed perimeter hole aligned with said hole of said upper jaw,

whereby spreading said lower handle away from said upper handle of said support portion draws said actuation member rearward and pivots said upper jaw to an open position, and whereby pulling said lower handle toward said upper handle pushes said actuation member toward a leading end of the instrument and pivots said upper jaw to a closed position adjacent said lower jaw.

AMMEND CLAIM 37 AS FOLLOWS:

37. (Currently amended) The instrument of claim 36, wherein said lower handle further comprises a planar spring operatively associated with said pivot connection between said pivot arm and said lower handle, said planar spring configured to give way if too much force is applied to said lower handle, whereupon said lower handle member moves with respect to said pivot arm, preventing the application of too much pressure during gripping of a tissue or graft material between said upper and lower jaws.

Reasons for Allowance

2. The following is an examiner's statement of reasons for allowance: None of the prior art of record alone or in combination discloses a surgical instrument comprising a surgical instrument as claimed specifically, a surgical instrument comprising a support member, an actuation member slidably disposed on the support member, an upper jaw having a hole passing through an upper and a lower surface, a slit formed *through a distal end* of the upper jaw and *extending from the upper surface to the lower surface*, the slit being *narrower* than the opening, and a lower jaw having a *closed perimeter hole* that is *aligned with* the hole of the upper jaw.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Houston whose telephone number is 571-272-7134. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

eh
4/24/07

ANHTUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER
4/26/07